

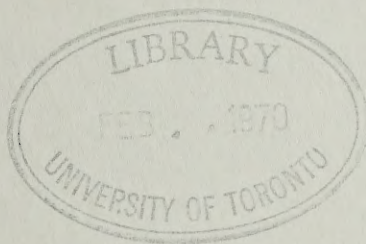
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Select committee on consumer credit
Hearings

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SELECT COMMITTEE ON CONSUMER CREDIT

Proceedings of the hearings at the
State Building, Los Angeles, California,
on the 7th day of January, 1965.

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J. MITZLER

Supervising Deputy on
Consumer Finance Law.



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1 MR. THORPE: First of all, let me introduce
2 myself, I'm Vincent Thorpe. I am in charge of the
3 Consumer Credit Fraud Program for the Attorney-General's
4 office. The general subject we are discussing is split
5 among several offices and as we talk about the problems
6 you will get an idea of the different offices which
7 handle consumer credit.

8 We, in the Attorney-General's office are
9 lawyers, and we handle some limited aspects of the
10 problem which we will discuss later. We had originally
11 planned to tour some of the facilities we have here, but
12 unfortunately, one of the gentleman who is concerned
13 with this problem is available only today, so we have
14 revised the schedule to talk to him first. He should be
15 here very shortly. Now, may I introduce the head of the
16 Los Angeles department of the Attorney-General's office,
17 Mr. Charles Corker.

18 MR. CORKER: I want to welcome you here on
19 behalf of Attorney General Thomas Lynch. I might tell
20 you a little about the Attorney Generals. There are
21 50 Attorney Generals and the Attorney General of the
22 United States.

23 The Constitution of California describes the
24 Attorney General as the chief law officer of the State.
25 In that capacity he conducts most of the State's litigation
26 and is responsibly charged with almost all the State's
27 legal problems. He is served by a staff of 180 lawyers,
28 all of those are civil service employees. They obtain
29 their service through the Civil Service. He has three
30



1 major law offices. There is one in San Francisco, one
2 in Sacramento, and one here in Los Angeles.

3 Forty percent of the State of California's
4 population lives in Los Angeles County. There is
5 approximately 80 lawyers in the Los Angeles office, of
6 which Mr. Thorpe is the Assistant Attorney General,
7 headed by Attorney General Stanley Mosk, and for some
8 four or five years they have been doing a very significant
9 job in this area. I think everyone dealing with consumer
10 problems is feeling his way. I think Mr. Thorpe will
11 want to learn from you as much as if not more than you
12 will learn from him. I understand you are members of the
13 Parliament of Ontario.

14 MR. SEDGWICK: Of the committee, Mr. Irwin
15 is an accountant, and I am a lawyer. Some of the rest
16 are lawyers.

17 MR. CORKER: It is indeed a pleasure to
18 have you here. Are you by any chance to be reapportioned
19 in Ontario?

20 MR. SEDGWICK: That's a very sensitive
21 question.

22 MR. CORKER: It's a pleasure to have you here.
23 I don't want to take up your time. If you have any
24 questions that I can help to answer, if you have anything
25 you would like this office to do, this office is at your
26 disposal.

27 I understand you are immediately interested
28 in consumer financing problems. I would like to have the
29 pleasure of entertaining your delegation but I have some
30



1 Justices from Japan who have discovered the most
2 fascinating problems which don't exist in Japan.

3 MR. THORPE: Mr. Gindler and myself will be
4 with you to answer any questions you have. Now, let me
5 introduce to you a man, who for many years, has been in
6 charge of handling the regulations of the licensed
7 lenders in the State of California of various kinds. He
8 may not admit to this but he is regarded by people who
9 work in the field as one of the leading authorities on
10 California law. He can't be here tomorrow, he is leaving
11 tomorrow to participate in the national study on Unit
12 Consumer Finance Law, and is recognized nationally on
13 this subject. May I introduce the Supervising Deputy
14 on Consumer Finance Law, Mr. Jack Mitzler.

15 MR. MITZLER: Thank you. I might start out
16 by giving you a little background on finance laws in
17 California. Among **them** are the Unruh Retail Installment
18 Sales Act and the Rees-Levering Automobile Sales Finance
19 Act, which is equivalent in California to the small loan
20 laws found in other States and Canada. On Credit Union
21 Law I can't give you too much help on that because I
22 haven't worked with it, and the Industrial Loan Law which
23 relates to Industrial Banks. Only we don't call them
24 banks, we call them Industrial Loan Companies. Normally
25 the industrial banks in other states take deposits. It
26 results in the same thing, it's just a difference in
27 terminology. We have one small loan law, but actually it
28 is used very little. There are only eleven or twelve
29 licensed lenders in the State of California as against
30



1 fifteen hundred licensed lenders in the other states.

2 If you are familiar with the State Finance Law relating
3 to automobiles and to goods under the Unruh Act, there
4 is no state supervision.

5 MR. SEDGWICK: Is there registration?

6 MR. MITZLER: There is no registration. We
7 have no jurisdiction over the enforcement of the Unruh
8 Retail Installment Sales Act or the Rees-Levering Act,
9 and to my mind this is a weakness in the California law.
10 We, of course have to be the deputies. I am an attorney,
11 and all the deputies who make investigations are attorneys.
12 In this field we can only make an investigation if there
13 is a specific complaint about something, and then only
14 if one of our own licencees happens to be involved. The
15 lender is licensed by us under the law.

16 MR. SEDGWICK: Under the small loan acts
17 there is only eleven or twelve, is that because the
18 limits are so inadequate?

19 MR. MITZLER: Up until 1905 we had one law
20 relating to lenders.

21 MR. SEDGWICK: There was no usury law?

22 MR. MITZLER: There was no law relating to
23 usury. In 1909 the legislature passed a law which is
24 now the Personal Property Brokers Law, on chattel mortgages
25 and personal property, and the rate specified in that
26 law which was originally five percent was reduced in 1911
27 to two percent.

28 MR. SEDGWICK: Regardless of the amount?

29 MR. MITZLER: Yes, that is my recollection.



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1 In 1918, they passed a usury law which set a usury
2 ceiling of 12 percent per annum, and made it a
3 misdemeanor to violate it. Therefore, there grew up
4 in California a system of lending whereby the lender
5 would only loan at the 12 percent rate and he would only
6 loan to persons who were referred to him. So that the
7 usury law under the 1918 amendment and presently, has
8 no control over the cost, the brokerage fees, other than
9 pure interest, not the cost of conducting business.

10 MR. SEDGWICK: We pay 24 percent.

11 MR. MITZLER: When we got into this later
12 in the thirties, it was found the rates ran from around
13 100 percent and some as high as 1000 percent because of
14 the quick turnover. As a result of this, on the basis
15 of the secured loan and unsecured loan, they adopted in
16 1934, an amendment to the Constitution which provided
17 for a 10 percent usury law, but exempted the banks,
18 savings and loans, licensed pawn brokers, licensed
19 personal property brokers and certain agricultural
20 cooperatives, and drafted legislation in fixing the rate.
21 That amendment gave our legislature the power to move in
22 and enact a small loan or consumer finance lending law
23 which was realistic in its rates because 12 percent or
24 10 percent is completely unrealistic.

25 They passed a small loan law wherein they
26 set a limit at \$300.00 which has never been changed,
27 which is too small, and I am recommending steps be taken
28 to increase that to \$1,000.00 or \$1,500.00 on any loan
29 as long as it is secured as subject to the Personal
30



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1 Property Brokers Act.

2 MR. SEDGWICK: On the Personal Property
3 Brokers law it gives the maximum rates up to \$5,000.00
4 and over \$5,000.00.

5 MR. MITZLER: It's $2\frac{1}{2}$ percent per month
6 on the first \$200.00, 2 percent on the next \$300.00,
7 and it takes you up to $\frac{5}{6}$ of 1 percent on the balance
8 over \$500.00.

9 MR. SEDGWICK: This applies to what we call
10 a conditional sales contract.

11 MR. MITZLER: It only applies to contract
12 loans on personal property or wage assignments. Our
13 wage assignment provision is merely to bring them within
14 the law, because under the Labor Code it is forbidden to
15 make an assignment on wages to be earned in the future.
16 We have a law which requires that everybody be paid at
17 least every two weeks, so that if you have a monthly
18 loan and you assign wages which are earned as of today,
19 and the first payment is due within 30 days you can see
20 how much that wage assignment is worth. He has already
21 got his pay, but it does bring them within the Personal
22 Property Brokers Law.

23 MR. THORPE: These are the two Acts. They
24 cover conditional sales, one relating to goods and the
25 other to automobiles.

26 MR. SEDGWICK: Is there any reason for
27 separating automobiles from refrigerators?

28 MR. THORPE: The practical reason, relating
29 to the interest.

30



1 MR. MITZLER: I think I can answer that
2 question. The first Automobile Sales Finance Act was
3 passed during the Second World War when prices were
4 sky high and there were no cars. Most people had to
5 finance cars, and there was pressure to put something in
6 the law limiting the charges on the sales finance of
7 automobiles. This was not true of other goods, it wasn't
8 necessary.

9 MR. LAWRENCE: It was a historical thing.

10 MR. SEDGWICK: I can't see any reason for
11 separating it. One of the problems I am most conscious
12 of is the method of refunding on prepayment, which is
13 different under the two laws?

14 MR. MITZLER: There is a difference under
15 the two laws, which is a substantial difference, and
16 that touches the consumer very deeply, it immediately
17 raises conflict and confusion.

18 MR. SEDGWICK: It would be better if we
19 stick them all in one.

20 MR. LAWRENCE: In your legislation in which
21 you had the rates specified, is this an add on?

22 MR. MITZLER: There is a provision in the
23 Personal Property Brokers Law where you can pre-compute
24 this charge and add it to the loan. Under that section
25 of the law there are some various provisions relating
26 to how you should compute refunds. It is very similar
27 to an add on, but the basic rate is a true rate.

28 MR. LAWRENCE: You do specify this in the
29 enactment?
30



1 MR. THORPE: Our lenders use different
2 methods of rate computation. Our Unruh and Rees-Levering
3 Acts in referring to so-called finance charges talk
4 about a specific rate of not more than one percent on
5 the unpaid balance, times the number of months in the
6 contract. If it's \$2,000.00 and you pay \$500.00 down,
7 if it's a two year contract your finance charge is 24%
8 on the \$1,500.00, on the unpaid balance.

9 The laws relating to lenders is really the
10 same transaction done on a different order. Instead
11 of going to a retailer, I go to a lender, and then take
12 the money to a retailer.

13 MR. SEDGWICK: It's very similar to the
14 revolving credit.

15 MR. LAWRENCE: Is this historic?

16 MR. THORPE: It's historic and bad. This
17 is a major problem. Taken any system, I don't care what
18 system you take. For example, while you are driving
19 around, you look at the banks. You'll see a big sign
20 in the window which says, interest on your savings
21 account, 4%, and on the other side of the street you see
22 a sign which says, auto loans, 4%. These are not the
23 same 4%.

24 MR. SEDGWICK: Our banks are the same thing,
25 12%, 11.6%.

26 MR. MITZLER: The law suggests the one good
27 reason that all interest be in simple annual rates was
28 that a man could tell in terms of spending how much he
29 is saving.
30



1 MR. IRWIN: What you are expressing is a
2 matter of crucial interest to this committee. Are you
3 saying this is the position desired by the State of
4 California?

5 MR. MITZLER: That is my personal opinion.

6 MR. MacDONALD: Has it been considered at
7 the legislative level?

8 MR. THORPE: A variety of bills have been
9 considered. There has never been unified agreement with
10 the people involved. We have the problem of a historical
11 background of conduct. The automobile industry will say,
12 we don't want to change, do it our way.

13 MR. SEDGWICK: We have a problem of divided
14 jurisdiction. Our banks are federally controlled. We
15 have the same problem. Do you have any measure of control
16 over the Federal Banks?

17 MR. THORPE: Of course the Federal Banks are
18 subject to State laws, negotiable instrument laws, yes.

19 MR. LAWRENCE: Can you control their
20 advertising?

21 MR. MITZLER: This is the one thing that I
22 feel is very necessary in these two Acts. There is no
23 control of advertising. There is no State official,
24 there is nobody to supervise the conduct of business.
25 As Mr. Thorpe said, economically it's identical, but
26 there is no control in the loan field which I think you
27 have in Canada.

28 MR. SEDGWICK: We do have in the small
29 loans act.
30



1 MR. MacDONALD: When you say these two
2 Acts don't come under your administration, under whose
3 administration do they they come?

4 MR. MITZLER: Nobody's, there is no super-
5 vision of what a contract shall contain, what they can
6 charge, or of the rights of the buyer to go into Court,
7 or the damages he can collect.

8 MR. MacDONALD: He must take action himself?

9 MR. THORPE: The Department of Motor Vehicles
10 does have some jurisdiction over automobile dealers
11 concerning violations of the Rees-Levering Act, but you
12 really can't call it regulations.

13 MR. MacDONALD: On the Rees-Levering Act
14 you suggested that this is because of the historic
15 conditions of the War. Is it still applicable to general
16 automobile financing?

17 MR. THORPE: The war situation is the reason
18 why we have two separate Acts.

19 MR. MITZLER: In most States there is some
20 evidence of breaking away from the time sales theory.
21 In other words, if this is a cash sale we have that
22 very distinction, and that distinguishes completely
23 between the loan transaction and the cash sale transaction.
24 There is a legal distinction but not a logical economic
25 distinction. Nebraska and Missouri are breaking away.
26 I know some of the mid-west States have broken away.

27 MR. REILLY: If a man desires he can shop,
28 where it applies to the man that lends or the man that
29 gives you the goods and takes your credit.
30



1 MR. MITZLER: I can tell you this, we get
2 phone call after phone call from people who have bought
3 an automobile or a frigidaire and signed a conditional
4 sales contract. They know we supervise the lenders so
5 it is natural they come to our office. The first thing
6 they say, I have a loan with X, Y or Z company. Well,
7 automatically we say, what do you mean when you say you
8 have a loan, and they will say, well, I bought an auto-
9 mobile, I bought it on a conditional sales contract and
10 they financed it. That's the normal person's reaction.

11 MR. MacDONALD: You are unanimous in your
12 personal view that the annual rate would be the only
13 aspect you should create?

14 MR. MITZLER: I am in favour of an annual
15 rate disclosure as a basic aspect. I am very strongly
16 in favour of the same aspect for everybody.

17 MR. MacDONALD: You also said it had been
18 talked about. Is this because of the opposition of
19 those other groups?

20 MR. MITZLER: There were three bills
21 introduced at the last legislature, as far as I know
22 they died there.

23 MR. RILEY: Has there been any disclosure
24 on the dollar basis?

25 MR. THORPE: All the bills introduced went
26 on the annual rate basis. A lot of the the opposition
27 was based on the argument it was too difficult to
28 compute.

29 MR. SEDGWICK: Did you use the same thing
30



1 as the Douglas Bill?

2 MR. MITZLER: Basically it was the same.

3 MR. MacDONALD: You never had dollar
4 disclosure at any stage?

5 MR. MITZLER: We have never had dollar
6 disclosure other than to this extent, our Personal
7 Property Brokers Act requires that the charges must be
8 expressed as a percentage per month or computed and
9 expressed to the borrower. We insist for the benefit of
10 the borrower that it state in the Statement of Loan which
11 is given to the borrower the estimated dollar amount of
12 the charges over the life of the loan. Our lenders
13 objected to that and prevailed upon a commissioner to
14 remove that from the regulations. I was opposed to it.

15 MR. MacDONALD: Do you have in California
16 as we have in Ontario, the opinion that the dollar
17 amount is sufficient, and the interest rate is not
18 required?

19 MR. MITZLER: I think that is true. It is
20 my opinion that is true.

21 MR. THORPE: Tomorrow we will have a
22 discussion with the representatives of the California
23 Retailers Association, so you will get a clear picture
24 of their views. In the Rees-Levering Act the contract
25 must state the interest charge in dollars.

26 MR. REILLY: How long have those three bills
27 been lying dormant?

28 MR. THORPE: It will be raised again at
29 this session.
30



1 MR. KERR: Do you have a conventional form
2 of conditional sales contract, or does the conventional
3 form show an annual interest rate. Somebody has to
4 finance a certain portion on a purchase. Do you base
5 your monthly payments on the actual interest rate shown
6 or the estimated finance charges?

7 MR. MITZLER: It does on the Conditional
8 Sales Contract. There is a requirement in the Rees-
9 Levering Act that they show the cash price, the downpayment,
10 the time balance, any insurance or other charges, and
11 the time price differential or service charge, and then
12 the payments are given which are simply twelve divided
13 into the balance.

14 MR. THORPE: It's only stated as a percentage
15 per month. The borrower has no conception of the finance
16 charges except in pre-computed loans.

17 MR. KERR: Based on the amount and length
18 of the loan.

19 MR. MacDONALD: In addition to the rate is
20 there any control on the service charges?

21 MR. MITZLER: We have a definition in the
22 law. The charges are defined to include all interest
23 cost, expenses of any sort in the servicing or enforcing
24 of the loans. There are certain expenses they allow in
25 addition to these, the filing fee, notary fee, charge
26 for insurance on the property secured loan and group
27 life insurance was added to them. But there are no
28 attorney's fees, no Court costs in the document. If
29 the Court wants to tack on costs, the Attorney-General
30



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1 says we will leave that up to the Courts. Court costs
2 are left to the discretion of the Court.

3 MR. LAWRENCE: You mean where there is a
4 default?

5 MR. MITZLER: Yes.

6 MR. THORPE: There is a late payment
7 provision, you are allowed 5% or \$5.00, whichever is
8 the lesser. However, there is a \$1.00 minimum. If
9 there is a default and a Court acts to collect, on a
10 conditional sales contract, the law allows attorney's
11 fees to the prevailing party.

12 MR. SEDGWICK: In that case if there is a
13 default and repossession, does the law also permit an
14 action for the difference of the sale?

15 MR. THORPE: As far as the Unruh Act is
16 concerned we don't have default judgments, deficiency
17 judgments any more. If you want to sue him for the
18 balance you can. Under the mortgage or security agreement
19 act they can take possession of the property and sell it
20 and even sue for the deficiency. The Unruh Act is the only
21 law which has no deficiency judgment.

22 MR. SEDGWICK: Under the English Law they
23 can't reposses after so much of the purchase price is
24 paid.

25 MR. THORPE: There was such a law in the
26 Rees-Levering Act, but it wasn't passed.

27 MR. SEDGWICK: So, if there is \$400.00 owing
28 on a \$500.00 article you can't even reposses, but you can
29 sue for the balance. One question that is before
30



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1 us, is the question of door to door sales, and the
2 cooling-off period. Do you have anything of that kind
3 here?

4 MR. THORPE: We have been discussing this
5 proposal with various people preparatory to considering
6 it's enactment.

7 MR. LAWRENCE: Is the door to door salesman
8 much of a problem here?

9 MR. THORPE: He is a very serious problem.
10 We have been discussing here only one aspect of the
11 consumer's problem. The actual terms of what is written
12 in the contract and the credit rates are important
13 problems, and the first step in consumer protection is
14 in making sure at the time he signs the contract he
15 knows what he is getting into.

16 MR. SEDGWICK: One of our problems is the
17 negotiation of the paper to a holder in due course who
18 is not bound or affected by the fraudulent representations
19 that the salesman made.

20 MR. THORPE: You are getting into an area
21 of extreme interest to us. I think that the law is clear
22 on the subject but again you don't find uniform agreement
23 on this. The paper could be of two types, negotiable or
24 non-negotiable.

25 MR. SEDGWICK: Or it could be negotiable
26 with recourse or without recourse.

27 MR. THORPE: If it's a negotiable instrument
28 and is negotiated by a seller to the finance company the
29 victim never knows it until some time has passed. It
30



1 takes him thirty days to find out he didn't get what he
2 was bargaining for, that he was induced to make this
3 purchase under some fraudulent representation. If the
4 paper is negotiable and the finance company buys it, and
5 the reaction of the buyer is, "I have been gypped, I'm
6 not going to pay on it", the finance company sues him,
7 and the Court says, that's life in the big city, this
8 finance company has a negotiable instrument, and he's
9 out of luck.

10 MR. MacDONALD: Has it developed in your
11 experience for retailers to get rid of paper in almost
12 a matter of hours?

13 MR. THORPE: They have their agreements all
14 set up. Since the passage of the Unruh Act we have
15 found that sellers have not used negotiable instruments.
16 They just use conditional sales contracts. This is non-
17 negotiable conditional sales contracts which they assign
18 to a finance company, so that the finance company is in
19 a better position to protect himself.

20 MR. LAWRENCE: Why are they doing it this
21 way?

22 MR. THORPE: This is a good question. I
23 may be wrong, but I suggest the reason is because the
24 Unruh Act has so spelled out the forms of the contract
25 that as a practical matter it is difficult to make it
26 negotiable. Whether I am right or wrong you are going
27 to be writing a new Act, so that negotiable instruments
28 can't be negotiable, this is the ideal way.

29 MR. SEDGWICK: What about the promissory note
30



1 that flows out of that action?

2 MR. THORPE: The whole thing is put in
3 one document, you can't cut it up. As a practical matter
4 we seem to have achieved this with our Act. We have
5 different theories and you have different theories. Do
6 it the right way and require the contract to be in one
7 form and non-negotiable.

8 MR. SEDGWICK: Subject to whatever represent-
9 ations were made by the seller.

10 MR. THORPE: And you don't have to spend a
11 million dollars on law enforcement. Fraud is a major
12 problem. It's almost impossible to prosecute, it's an
13 enormously expensive and difficult thing to do, we can
14 only prosecute the biggest fraud, unless you want to
15 spend a fantastic amount of money.

16 MR. MacDONALD: We have had the same exper-
17 ience. Our fraud rackets have to work on the thing for
18 two or three years.

19 MR. REILLY: Have the worst offenders in the
20 door to door selling been the aluminum siding, and doors
21 and windows?

22 MR. THORPE: We have indicted 22 salesmen
23 and a sales company for felony frauds, and we have just
24 indicted one of the finance companies. This is the
25 first time we have been able to do this, the cost of
26 accomplishing these prosecutions is enormous. We were
27 never able to do it before because we don't have the
28 trained personnel to do it. Once we had the personnel
29 it still takes a year to put the case together. It's
30



1 too expensive for society to let these millions of
2 dollars to be stolen from wage earners. If they are
3 going to spend it let the money go to legitimate business
4 men in your community.

5 MR. MacDONALD: You chase out the shysters
6 and the good business man gets the business.

7 MR. THORPE: The facts are, that today in
8 California the vast majority of conditional sales
9 contracts signed are not negotiable, most automobile
10 contracts are not negotiable.

11 MR. LAWRENCE: This has not affected the
12 consumer?

13 MR. THORPE: We have ten times as much
14 credit as before.

15 MR. LAWRENCE: We just have the four large
16 aluminum purchasers, and they are employing salesmen
17 directly themselves, but this is not as a result of
18 legislation. It's just that the whole field stunk so
19 much it got out of hand.

20 MR. THORPE: It came in cycles. They made
21 a big stink and then they would all leave.

22 MR. IRWIN: We had an interesting comment
23 on that arising from this committee's work, from the
24 publicity. We learned from our Attorney-General of
25 Manitoba that they had all run across the border. Our
26 situation is much cleaner now than before the committee
27 sat.

28 MR. KERR: Have you any legislation that
29 requires that a contract must be completed entirely when
30



1 it is signed by the purchaser, or before it is signed
2 by the purchaser?

3 MR. MITZLER: Yes, it's true in the Sales
4 Finance Act and our loan laws. Sometimes this has a
5 disadvantage where you have loans by mail, you get your
6 dates mixed up.

7 MR. LAWRENCE: I am interested in the
8 advertising controls, are they effective?

9 MR. MITZLER: If they are not effective it's
10 because the person handling them has not done the job
11 which you or I think they should have done. We have a
12 rule that requires every piece of advertising to be
13 submitted to us prior to it's use. This includes loan
14 trusts under our particular law, small loan and industrial
15 loan law and so on. They all have the same problem.
16 The banks are not regulated, insofar as loans are
17 concerned they are exempt from the usury law. The
18 Superintendent of banks does a good job in seeing the
19 banks are solvent.

20 MR. WHITE: You have one type of lender
21 who is restricted and another type of lender who is not
22 restricted.

23 MR. MITZLER: I think the consumer should
24 be protected in all consumer legislation.

25 MR. WHITE: I am talking about from the
26 view of the lender. Why should the finance company be
27 licensed while the banks go scot free?

28 MR. MITZLER: I think the answer is to
29 bring some restrictions to the banks. I feel there
30



1 should be similar regulations on all types of consumer
2 finance, whether it should be across the board, a single
3 rate in all cases and a single statute or whether there
4 should be a segmented bill. There should be a uniformity.
5 I can see a good many reasons for having different laws
6 because of the different type of business which is done
7 covering savings, not loans, in banks and credit unions
8 which are entirely different.

9 MR. IRWIN: Do I interpret what has been
10 said so far about these two Acts and your small loans
11 Act, that the rate is not only to be disclosed but it
12 also has a maximum rate?

13 MR. MITZLER: It has a maximum rate.

14 MR. IRWIN: You can't exceed it?

15 MR. MITZLER: It goes up to \$5,000.00. Over
16 that there is no limitation.

17 MR. IRWIN: I would gather in California where
18 you have enacted these two Acts and the usury laws that
19 you are committed to the principle of a maximum rate.
20 Would it not be less cumbersome, at any rate, in the
21 legislation if you didn't attempt to control the rate,
22 merely ask for it's disclosure, don't set rates. Speaking
23 as an accountant I feel strongly on this point, that the
24 legislator whoever that may be, can't really possibly
25 exercise the judgment of the lender. I am not speaking
26 in favour of the lender, but it imposes on the legislators
27 the very serious problem of exercising judgment because
28 the lender is the only one that knows the risk at the
29 time.
30



1 MR. MITZLER: This is true. Disclosure,
2 of course, is very desirable and a necessary quality in
3 any law. However, I personally, am not of the opinion
4 that disclosure is the answer to all the problems, and
5 I am concerned with the effects that you will find. If
6 you have disclosure only and nothing else you will find
7 that outrageously high rates are being charged. When
8 you consider a \$20,000.00 loan at 2% per month, and
9 there is no law which prohibits that in this State, and
10 yet they are being made, I think somebody should have
11 their head examined.

12 MR. REILLY: That \$20,000.00 is not being
13 borrowed by the small consumer?

14 MR. MITZLER: That's true.

15 MR. REILLY: Do you make any distinction
16 between the large consumer and small consumer?

17 MR. MITZLER: No, there is not.

18 MR. THORPE: Maybe we can get back to Mr.
19 Mitzler later. May I interrupt now. I have about 20
20 minutes to twelve, later on we might take a break and
21 visit the Courthouse and meet one of the Judges. At the
22 moment, it is my privilege to introduce to you Mr.
23 Stanley Mosk, who is responsible in a large part for the
24 movement which created so many of the laws we have talked
25 about today.

26 MR. MOSK: Thank you very much. I appreciate
27 those kind words. I want to join in welcoming you all
28 here to California, and certainly I know the Attorney-
29 General's office and the other agencies will be delighted.
30



1 I think I had some correspondence with some members of
2 the committee prior to this visit.

3 MR. THORPE: We just started this discussion
4 on fraud. We really didn't get into it.

5 MR. MOSK: This is a dramatic illustration
6 as to the extent some manufacturers take advantage of
7 consumers. A housewife in the town of Ventura dropped
8 a cosmetic jar on the floor, and when she picked it up
9 she found it had a false bottom and false sides, so she
10 sent it up to our Department of Weights and Measures.
11 When they looked it over they found it violated California
12 law. In most States we have a law that prohibits
13 packages with false bottoms or side walls. The prosecutor
14 brought a criminal complaint against the Clairol Company
15 and got a conviction, but in getting his evidence he
16 discovered that other manufacturers were doing the same
17 thing with their plastic jar. He turned it over to our
18 office and we served notice on all the manufacturers
19 that they had to stop violating our law. We had the
20 authority to seize any jars that violate our laws, and
21 we let our cosmetic people know we were going to check
22 every jar. This disturbed them because California
23 represents 10% of the total market in the United States.
24 As a result all the manufacturers fell into line. We
25 then took on the packaging industry. Cans of food
26 all seemed to contain an inner lining or plastic bag
27 inside of the can that cut down the quantity. When
28 they were told about this the manufacturer's stock answer
29 was, we set forth the quantity on the can, if we say
30



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1 there is six ounces, there is six ounces. This was
2 true, but our theory was that the housewife when shopping
3 depends on eye appeal and when she takes a jar off the
4 shelf she has a reasonable right to believe that jar is
5 filled with the quantity she intends to purchase without
6 having to read the small print of what the weight may be.

7 MR. MacDONALD: In this connection does your
8 legislation go to the altering of the product. They
9 used to put out what they call a concentrate, now they
10 put out a fluffed out product. Does it amount to the
11 same thing?

12 MR. THORPE: We used this as evidence of
13 the deceptive nature of the package. It was not prohibited
14 specifically.

15 MR. MOSK: In the jar case the cosmetic
16 manufacturers insisted they had to have some kind of
17 insulation to strengthen the plastic jars, and that the
18 contents were subject to the elements. These were
19 incidental cases, but I think we served notice that the
20 government was interested in protecting the consumer
21 which was an important factor, and it was fair warning to
22 any designing manufacturers that might try to get away
23 with it for a while.

24 MR. REILLY: It was known as a deceptive
25 packaging law?

26 MR. MOSK: Yes.

27 MR. REILLY: What about the manufacturers
28 who like to show lean bacon where it may be fat bacon?

29 MR. MOSK: This was done by deceptive
30



1 packaging. Our Department of Agriculture may be
2 interested in that. We pioneered in another field. We
3 got a judgment against a jewelry store in Glendale for
4 false advertising. This is a difficult field because
5 you find the newspapers aren't very friendly, they fear
6 this is an invasion of the freedom of the press, wrong-
7 fully, I feel.

8 If the consumer is injured he has a right
9 to bring a civil law suit. We got an injunction against
10 a Glendale jeweller for deliberately falsely advertising.
11 We haven't extended that very far. First of all, the
12 newspapers won't permit any deliberate false advertising.
13 It's a difficult field, but the government ought to
14 indicate it's vigilance.

15 MR. LAWRENCE: How much of this is tied to
16 criminal intent?

17 MR. MOSK: I don't think it's criminal
18 intent. In this cosmetic case one manufacturer started
19 it, the manufacturer of the jars, by saying, your
20 competitor is using this jar, so you better do it too.

21 MR. LAWRENCE: You think this is outside of
22 the general heading of criminal law?

23 MR. MOSK: We seldom proceed criminally, we
24 just go in and get a civil injunction against the
25 offender.

26 MR. LAWRENCE: We are trying to circumvent
27 it by utilizing a licensed door to door salesman, maybe
28 a licensing provision for salesmen.

29 MR. THORPE: It's handled by local authorities.
30



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1 This is something we are thinking about.

2 MR. LAWRENCE: Is this satisfactory?

3 MR. THORPE: No, it's not satisfactory to
4 the door to door salesman or customers. I don't know
5 what the answer is.

6 MR. LAWRENCE: Your licensing has worked
7 out alright because it's done on the State level?

8 MR. THORPE: Yes.

9 MR. LAWRENCE: Who licenses your car dealers?
10 It's outside our field. Do you have a
11 Central Registry?

12 MR. MITZLER: They are registered under the
13 uniform commercial code except boats, and boats are
14 also registered with the Motor Vehicle registration.

15 MR. LAWRENCE: If there is a lien against
16 the automobile---

17 MR. MITZLER: The lien holder must show
18 as the legal holder on that, and when the lien is paid
19 off he is required to sign off.

20 MR. WHITE: Does the cost of interest
21 include property insurance and life insurance?

22 MR. MITZLER: Those are included. That
23 is one of our problems. The law is defective in that it
24 permits compulsory requirement of insurance on the
25 property secured lien. We have some new rules which we
26 hope are going to change that. We have a number of
27 companies, Seaboard Finance Co., Pacific Finance, all
28 have insurance companies and the rates are outrageously
29 high. I have seen situations in which insurance was
30



1 required, the insurance cost \$187.00. The lien may
2 have been \$400.00 but the car wasn't worth more than
3 \$250.00, and it was \$50.00 deductible. I don't call it
4 insurance.

5 MR. WHITE: As I understand the Unruh Act,
6 the vendor, under the Conditional Sales Contract may
7 repossess the goods.

8 MR. MITZLER: Under the Unruh Act he has an
9 election to do one or the other.

10 MR. WHITE: We have given some thought to
11 a provision like this. It seemed to us it might not
12 be entirely fair to an automobile dealer or any other
13 vendor because a person might acquire these goods and
14 abuse them and destroy their value. The dealer should
15 be able to repossess these goods and go beyond that.
16 What has been your experience in that respect if a fellow
17 has no assets other than the car he has bought?

18 MR. MITZLER: Actually a deficiency judgement
19 is not going to mean much under that situation. I
20 realize there is a problem of fairness particularly with
21 automobiles. If the lender or seller of an automobile
22 wants protection he should have insurance protecting him.
23 Under the present Property Act he will have to take
24 one half of one percent under the rate of \$200.00, if he
25 is insured by loss. Of course, there is the other side
26 of the coin. If the lender or the person advancing
27 credit knows he is going to rely solely on a deficiency
28 judgment of the person or the value of the property, do
29 we not have then somewhat of a ceiling on the meaning of
30 credit. So I am wondering how are you going to balance



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28

1 those two.

2 MR. WHITE: I can't see a law written in
3 limiting the vendor's rights.

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